

**Subject:** RE: Your R-T-K Request  
**From:** David Owen <townmanager@wolfeboronh.us>  
**Date:** 10/2/2014 11:39 AM  
**To:** Bob Lemaire <bob@overeasy.com>

Bob: In response to your renewed request for the recently concluded settlement agreement to be made available for inspection by you under the Right-to-Know law, I must again decline your request for the following additional reasons:

- The request you cited by Wright-Pierce for costs and attorney's fees in its Answer to the Town's lawsuit against Wright-Pierce does not constitute a "lawsuit" against the Town. It was simply a request that the Court award Wright-Pierce its costs and fees for having to defend against the Town's lawsuit. A request for costs and attorneys' fees is a standard request by a defendant that is made in most lawsuits. Costs are awarded to a defendant as a matter of course if the defendant prevails. Attorneys' fees may be awarded to the defendant, generally if the Court finds that the plaintiff's lawsuit was frivolous or patently unreasonable, which was not the case in the Town's lawsuit against Wright-Pierce. A request by a defendant for the award of costs and fees is not a "lawsuit" against a plaintiff.
- RSA 91-A:4, VI provides that agreement to settle an actual lawsuit against a governmental unit must be made available for public inspection, but also that an agreement to settle any "threatened lawsuit, or other claim" against a governmental unit must be made available for public inspection. However, the Settlement Agreement with Wright-Pierce cannot reasonably be construed to include a lawsuit or claim which Wright-Pierce may have threatened to make during the course of the proceedings. That proceeding is over and Wright-Pierce never filed any "lawsuit" or even a counterclaim against the Town. Thus, the Settlement Agreement cannot reasonably be construed to be a settlement of a "threatened lawsuit or other claim" that Wright-Pierce may have made.
- The Settlement Agreement does require Wright-Pierce to release any claim that it may have against the Town which Wright-Pierce could have asserted. But releasing a claim that a party could have brought is not the same as releasing a claim set forth in an actual lawsuit that was brought.

Dave Owen

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**From:** Bob Lemaire [<mailto:bob@overeasy.com>]  
**Sent:** Wednesday, October 01, 2014 10:10 AM  
**To:** David Owen  
**Subject:** Re: Your R-T-K Request

Dear Mr. Owen,

I've read the attached answer to the town's amended complaint by Wright-Pierce. The answer contains a counterclaim where they ask that Wright-Pierce be awarded "costs and attorney's fees and be granted such further relief as this Court may deem just and proper."

That constitutes a lawsuit against the town. As such, I am asking that the settlement document be released pursuant to RSA 91 A:4 XI.

Bob

On 9/30/2014 4:21 PM, David Owen wrote:

Bob: In response to your previous Right-to-Know law request to see a copy of the signed settlement agreement between the Town and Wright-Pierce Engineers, I can inform you that all the parties have now signed the settlement agreement, and so the signed settlement agreement now actually exists. However, I must decline to make a copy of the document available for your inspection for the following reasons;

- The Settlement Agreement is “confidential” within the meaning of RSA 91-A:5, IV and therefore not subject to disclosure to the general public, and
- RSA 91 A:4, XI provides that “every agreement to settle a lawsuit **against** a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk’s office and made available for public inspection for a period of no less than 10 years from the date of settlement.” The Wright-Pierce litigation was a lawsuit by, not against, a governmental unit. Had the Legislature intended that agreement to settle a lawsuit by a governmental unit be made available for public inspection, it could simply have added the words “by or” before “against a governmental unit” in RSA 91A:4, XL.

Dave Owen